

REMARKS/ARGUMENTS

Claims 1-8, 12, 35-37, 40-44, 53, and 54 are pending in the application. Claims 9-11, 13-34, 38-39, and 45-52 have previously been canceled.

All pending claims have been rejected as lacking novelty or as obvious. Applicant traverses the grounds for these rejections.

I. OVERVIEW

The pending claims are directed to subject matter encompassing, among other things, systems and methods for planning energy supply for energy consumers by negotiating an energy supply specification with one or more energy suppliers.

Generally speaking, a bi-lateral (or multi-lateral) negotiation process occurs, in which energy planning information is exchanged between an energy management system and one or more energy suppliers, each of which has a sub-system of the energy supply planning system operatively associated with it. An energy planning interface executes a routine for exchanging energy planning information over a communications network between the energy management system and energy supplier subsystems. The energy supply interface then permits negotiation of an energy supply specification from the energy suppliers on behalf of the energy consumers. Application at page 22, lines 6-22.

All of the pending claims involve, in one way or another, the *negotiation* of an energy supply specification. The alleged prior art cited against the pending application, by contrast, does not disclose or suggest the negotiation of an energy supply specification.

Negotiation of an energy supply specification is not the subject of U.S. Patent No. 5,698,029 to Johnson et al. ("Johnson"), the primary reference applied against the pending claims. To the contrary, Johnson relates to a system for the *auction* of energy.

Johnson does not provide any special definition for "auction" that would encompass "negotiation," but instead relies on that word's plain meaning. For this meaning we turn to

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dictionaries of English usage. Merriam-Webster, for one, defines the word "auction" as "the sale of property to the highest bidder." Merriam-Webster Online Dictionary. Even the Merriam-Webster definition of "auction" when used as a verb, "to sell at auction," id., does not contemplate or encompass negotiation.

Negotiation and auction are antithetical to one another. Negotiation entails interaction between parties to a transaction, including exchange of information and compromise between them. The pending application and Merriam-Webster contemplate a similar sense of the word "negotiating." In particular, the application describes this verb as including, but not being limited to, "arranging for or bringing about through exchange of information and compromise." Application at 16, lines 17-20. This usage is wholly consistent with accepted plain language definition of the term, namely "to deal with (some matter or affair that requires ability for its successful handling) : MANAGE b : to arrange for or bring about through conference, discussion, and compromise." Merriam-Webster Online Dictionary.

An auction, as described above, involves parties placing bids in a manner that obviates negotiation. Auctions set prices in the absence of negotiation. Significantly, Johnson does use the term "negotiate" at one point in the patent and does so in a way that plainly does not involve or in any way suggest negotiating an energy supply specification. In pertinent part, Johnson states that when prices bid in an auction rise above a "fixed upset price" previously agreed to by the default provider, the relevant control computer (or the Moderator) will select the default Provider as the winning bidder. Col. 15, lines 3-7. In order to provide for this, "[t]he Moderator may negotiate with one or more Providers to *serve as default Providers* for EAS." Col. 15, lines 7-8 (emphasis added). Negotiation, as used by Johnson, has to do with reaching agreement as to the fact of serving as a default Provider. It absolutely does not disclose or even hint at the negotiation of energy supply specifications, as recited in the pending claims. In view of this language, had Johnson intended that "auction" somehow disclose "negotiate" (despite its plain meaning to the contrary), it could have defined it as such. Yet it failed to do so.

II. REJECTION UNDER 35 U.S.C. § 102(e)

i. Claims 1, 3-8, 12, 35-36, 40-44 and 53-54

These claims stand rejected under 35 U.S.C. § 102(e) over Johnson, which relates to energy auctions. As described in Section I, above, all pending claims, including those rejected on this particular ground, require either structure to support, or the method step of, negotiating an energy supply specification:

- (i) an interface *for negotiating an energy supply specification* from said at least one energy supplier to said energy consumers (independent claim 1);
- (ii) an interface *for negotiating an energy supply specification* for said energy consumers (independent claims 35, 36)
- (iii) a second routine executed by said processor *for negotiating an energy supply specification* from said energy supplier(s) to said energy consumers (independent claims 40, 42)
- (iv) *negotiating an energy supply specification* responsive to said requests for energy and from said at least one energy supplier (independent claim 44); and
- (v) employing said global communication network to *negotiate an energy supply specification* from said at least one energy supplier and responsive to said requests for energy (independent claim 53).

A rejection of a claim under 35 U.S.C. § 102(e) requires that every claim limitation be identically disclosed in a single prior art reference. The art cited against the above-identified claims fails to do so.

As discussed above in Section I, Johnson neither discloses nor suggests the negotiation of an energy supply specification. To the contrary, Johnson relates to an auction, in which prices are set by a bidding process and *without* negotiation.

Because Johnson altogether fails to disclose or even suggest all elements of the independent claims, and therefore the claims which depend from them, claims 1, 3-8, 12, 35-36, 40-44 and 53-54 are respectfully submitted to be patentable.

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III. REJECTIONS UNDER 35 U.S.C. § 103(a)

Claims 2 and 37 stand rejected over Johnson as applied in view of Robinson et al., Development of the Intercontrol Center Communications Protocol, specifically described by the Applicant in the Background Section of the application. See, e.g., Application, page 3, line 3 – page 5, line 2.

Claim 2 depends from independent claim 1, and claim 37 from independent claim 36. Both incorporate the limitations of the respective base claims, 35 U.S.C. §112, ¶4, the rejections of which are traversed above. For the same reasons, as advanced in Sections I and II above, claims 2 and 37 are respectfully submitted to recite patentable subject matter.

IV. CONCLUSION

Upon entry of this paper, claims 1-8, 12, 35-37, 40-44, 53 and 54 are pending in the application. Applicant submits that the claims, for the reasons set forth above, are now in condition for allowance. Reconsideration and allowance are therefore respectfully requested.

Other than as specified in the first paragraph of this communication, no fee is believed to be due in connection with this communication. However, if such additional fee is required, the Commissioner is authorized to charge the fee to Deposit Account No. 23-1703.

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